

REMARKS

This amendment is responsive to the Final Rejection issued January 12, 2010. Reconsideration and allowance of claims 1-9 are requested.

The Office Action

Claims 1-9 stand rejected under 35 U.S.C. § 103 over the applicant's allegedly admitted prior art in view of O'Rourke (US 7,225,408).

The Present Amendment Should Be Entered

The present amendment should be entered as placing the application in better condition for appeal or allowance.

More specifically, the present amendment amends the Abstract to comply with the Patent Office Rules by deleting terms such as "invention", "said", and the like. The Abstract has also been amended grammatically to read better.

The claims are amended to correct errors of a grammatical or typographical nature. For example, claims 2 and 3 have been amended to delete "is capable" in order to avoid potential issues regarding the propriety of these claims due to potential use issues. In claim 1, "whereby" which as used in line 5 is clearly an incorrect word choice, has been replaced with "wherein" to make the claim grammatically correct. The typo "claim1" has been corrected to "claim 1" in line 1 of claims 4, 6, and 7. It is submitted that these changes should be made as eliminating potential 35 U.S.C. § 112, second paragraph, definiteness issues and otherwise placing the claims in better condition for appeal or allowance.

Because these amendments do not change the scope or substance of the claims, it is submitted that these amendments require no further search or consideration.

The Claims Distinguish Patentably Over the References of Record

Claim 1 calls for at least one application program which has two parts: (1) validation software for checking and enabling the operability of the application program in connection with a data file, and (2) processing software for executing the

functionality in connection with the data file if it is enabled by the validation software. As explained in greater detail in the present application, application programs typically have corresponding validation software embedded in the program which runs when the application program is run prior to the processing software portion of said application program.

More significantly, claim 1 calls for the validation software portion of the above-discussed application program to be executed separately and independently of the software processing portion of said application program. The Examiner acknowledges that this limitation is not shown or fairly disclosed in the applicant's admitted prior art. Rather, the Examiner directs the applicant's attention to column 4, lines 15-58 and column 6, lines 4-51 of O'Rourke.

Neither of these sections of O'Rourke address an application program which has a validation software portion and a processing software portion, which processing software portion is executed in dependence on being enabled by the validation software or independently. Nor do these sections of O'Rourke address or make any suggestion that such a validation software portion of said application program be executed separately and independently from the processing software. As discussed below, this modification creates numerous and distinct advantages, particularly in the area of medical diagnostic image data processing.

O'Rourke is concerned with a wireless, portable device, similar to a PDA, but designed specifically to access patient records remotely over a hierarchy of LANs or WANs such as Ethernet-compatible LANs used to connect different hospital departments. Access can also be provided to the Internet via a firewall, dial-up telephone connections, DSL, cable-modem, or the like (column 3, lines 30-43).

Column 4, lines 15-36 of O'Rourke are concerned with configuring and using this hierarchy of available communications channels and are not concerned with and do not address the above-discussed sections of claim 1.

Column 4, lines 37-50 of O'Rourke sets for a sequence of menus, (see, for example, Figures 9-20B), which the user navigates to retrieve the desired medical information. This section does not address or relate to the above-discussed portion of claim 1.

Column 4, lines 50-58 of O'Rourke address the issue of authorized access to the information. Under the HIPAA laws, medical information must be kept confidential. It cannot be accessed by anyone curious in looking at it, or even just any medical personnel within a medical facility. Rather, access to medical information is limited to an appropriately small subset of people who should legitimately view a given patient's medical information. This section of O'Rourke relates to limiting a given user's access to only appropriate information within the medical facility database.

Accordingly, it is submitted that column 4, lines 15-58 of O'Rourke referenced by the Examiner does not discuss an application program which includes a validation software portion and a processing software portion, much less make any suggestion that such a program be modified to enable its validation software section to be executed separately and independently from the processing software. Such issues are not addressed in column 4, lines 15-58 of O'Rourke.

Column 6, lines 4-52 of O'Rourke referenced by the Examiner also do not address these issues. First, as discussed above, the HIPAA requirements limit access to medical information. The first portion of this section of O'Rourke addresses passwords and limiting access only to authorized personnel. The second portion of this section of O'Rourke addresses a series of menus to assist the user in navigating the medical database. A medical facility has one or a series of databases which store all of the medical information for patients of the medical facility. The medical facility might be a single hospital, an entire hospital system, or the like. In any case, it is a massive amount of information which could be difficult to navigate and find the appropriate information. This section of O'Rourke proposes a series of menus which enables the user to zero-in on and retrieve the desired information easily. This section does not address or discuss an application program which includes (1) a validation software portion for checking and enabling the operability of an application program with a data file and (2) a processing software portion which executes the functionality when enabled by the validations software.

A complex medical system which underlies the portable access device of O'Rourke may well have prior art application programs embedded in it, but O'Rourke does not address any such prior art application program, much less propose

or suggest a modification to such prior art application program in which the validation software portion is executed separately and independently from the processing software.

O'Rourke neither addresses application programs as defined in lines 5-9 of claim 1 nor addresses the acknowledged shortcoming of the acknowledged prior art as a reference, i.e., executing the validation software of an application program as defined in lines 5-9 separately and independently from the processing software portion.

Because O'Rourke does not cure or even address this shortcoming of the acknowledged prior art, it is submitted that claim 1 and claims 2-9 dependent therefrom distinguish patentably and unobviously over the references of record.

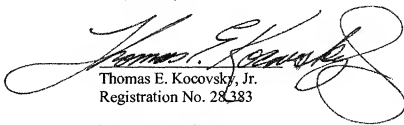
The applicant reserves the right to argue the additional limitations and reasons for patentability of dependent claims 5-9 in a timely filed Appeal, should such appeal become necessary. For the reasons set forth above, it is submitted that such an Appeal should not be necessary.

CONCLUSION

For the reasons set forth above, it is submitted that claims 1-9 distinguish patentably over the references of record and meet all statutory requirements. An early allowance of all claims is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is requested to telephone Thomas Kocovsky at 216.363.9000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas E. Kocovsky, Jr.", with a large, stylized flourish at the end.

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